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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,387	08/09/2005	Robin John Batterham	4623-045790	4715

28289 7590 01/19/2010  
THE WEBB LAW FIRM, P.C.  
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EXAMINER
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ZHU, WEIPING

ART UNIT	PAPER NUMBER
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1793

MAIL DATE	DELIVERY MODE
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01/19/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/516,387	<b>Applicant(s)</b> BATTERHAM ET AL.	
	<b>Examiner</b> WEIPING ZHU	<b>Art Unit</b> 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-14, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-14, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/3/2009</u> .                                               | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of Claims***

1. Claims 1-7, 10-14, 21 and 22 are currently under examination, wherein claims 1 and 21 have been amended and the claim 22 has been newly added in applicant's amendment filed on November 3<sup>rd</sup>, 2009.

### ***Status of Previous Rejections***

2. The previous rejections of claims 1-7, 10-14 and 21 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention as stated in the Office action dated May 4, 2009 are withdrawn in light of applicant's amendment filed on November 3<sup>rd</sup>, 2009. The previous rejections of claims 1-7, 10-14 and 21 under 35 U.S.C. 103(a) as stated in the Office action dated May 4, 2009 are maintained as follows.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7, 10-14, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 4,960,584).

Claims 1-7, 10-14 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 4,960,584) as stated in the Office action dated May 4, 2009.

With respect to the amended feature of removing the parentheses in the instant claims 1 and 21, it does not change the scope of the claims. Therefore, the reasons for the rejections of claims 1 and 21 as stated in the Office action dated May 4, 2009 are further applied properly herein.

With respect to the amended feature of the time period of less than 4 hours in each 24 hour period for leach liquor application in the instant claims 1 and 21, Brown ('584) discloses that the contact time ranges from four hours to sixty days (col. 4, line 65 to col. 5, line 13), which meets the claim limitation because the instant claims do not limit the number of the 24 hour period; and the total contact time would be less than 4 hours if the number of the 24 hour period is one (1), which is very close to the contact time of 4 hours as disclosed by Brown ('584). Furthermore, it is well held that discovering an optimum value of a result-effective variable involves only routine skill in the art. In re Boesch, 617, F.2d 272, 205 USPQ 215 (CCPA 1980). In the instant case, the total contact time is a result effective variable, because it would directly affect the completeness of the leaching as disclosed by Brown ('584) (col. 5, lines 2-13). Therefore it would have been obvious to one skilled in the art to have optimized the contact time of Brown ('584) for the desired completeness of the leaching. See MPEP 2144.05 II.

With respect to the newly added claim 22, the reasons for the rejections of the instant claims 1 and 21 are further applied. Furthermore, Brown ('584) discloses moving the curtain along the entire length of the heap continuously by arranging a series of parallel tubes 16 separated from each other at a desired distance to cover the entire

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heap area in order to ensure a substantially uniform saturation of the entire heap (Fig. 1, col. 3, lines 51-54 and col. 4, lines 52-64), which meets the limitation of step (b) in the newly added claim 22, because it would have been obvious to one of ordinary skill in the art that the curtain can be moved along the entire length of the heap either continuously as disclosed by Brown ('584) or in a series of steps (e.g. section by section) as instantly claimed. These two ways of moving the curtain along the entire length of the heap would have similar results in terms of achieving a substantially uniform saturation of the entire heap.

### ***Response to Arguments***

4. The applicant's arguments filed on November 3<sup>rd</sup>, 2009 have been fully considered but they are not persuasive.

The applicant argues that Brown ('584) does not teach the contact time is less than 4 hours in each 24 hour period; the curtain is moved; and the claimed feature in the step (b) in the newly added claim 22. In response, see the reasons for the rejections of the amended features in the instant claims 1 and 21 and the claimed feature in the step (b) in the newly added claim 22 above.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Weiping Zhu whose telephone number is 571-272-6725. The examiner can normally be reached on 8:30-16:30 Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy King/  
Supervisory Patent Examiner, Art  
Unit 1793

WZ

12/1/2009